

REMARKS

This application has been carefully reviewed in light of the Office Action of November 10, 2004. By this amendment, independent claims 22 and 32 have been amended in order to comprehensively characterize the processing modifier as employed in applicant's invention. For reasons as set forth below and in applicant's Response filed August 16, 2004, it is respectfully submitted that the proposed combination of the four references Peiffer, Shiga, Reid and McAlpin cannot properly be combined to establish a *prima facie* case of obviousness. Moreover, it is respectfully submitted that the references, even if combined exactly as proposed in the Office Action, would still not lead one of ordinary skill in the art to applicant's invention as claimed.

Applicant's independent claims 22 and 32 as amended, call for melt blending of the processing modifier and propylene/ethylene copolymer in order to improve the processability of the copolymer and provide an enhanced machine direction draw ratio of the copolymer. Support for claims 22 and 32 as now amended is found in applicant's specification at pages 9, 15 and 21. The amorphous polymers disclosed in Peiffer are not processing modifiers as called for in applicant's claims, but instead are polymeric solids which function as voids or void initiators in the "voided layer" of Peiffer. The amorphous polymers of Peiffer are incorporated into the polymer as granules or as granulated concentrates in order to form the voids in the voided layer. As disclosed, for example, in Peiffer, column 5, lines 49 et seq., the amorphous polymer is in the form of separate particles which are visible in scanning electron micrographs and lead to void-like cavities around the particles of the amorphous polymer. There is no disclosure in Peiffer that the amorphous polymers there function as processing modifiers and in fact, since they are distributed as particles in the basic polymer layer they clearly could not function as processing

modifiers effective to improve the processability of the isotactic propylene-ethylene copolymer as set forth in applicants' claim.

The rejection of claims 22-40 as unpatentable over the combination of Peiffer in view of Shiga in view of Reid and further in view of McAlpin is respectfully traversed. This rejection strings together the four references in an effort to establish obviousness of applicants' claimed invention. The fact that the primary reference to Peiffer fails to disclose an isotactic propylene/ethylene copolymer containing no more than 1 wt.% ethylene, together with the lack of disclosure of the addition of a processing modifier, is an important consideration, but it is by no means the sole consideration. Another important consideration, as pointed out in applicants' previous response, is the issue of hindsight reconstruction of the prior art references to arrive at the claimed composition. Applicants will not here repeat the arguments on this issue made in the response filed August 16, 2004. However, it would appear to be appropriate to summarize applicants' arguments as they reflect the standard set forth in MPEP § 2143. As stated in MPEP § 2143, there are three requirements to the establishment of a *prima facie* case of obviousness:

- 1) There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify...to modify the reference or to combine reference teachings.
- 2) There must be a reasonable expectation of success.
- 3) The prior art references, when combined, must teach or suggest all of the claimed limitations.

Next this section goes on to state that the teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art and not in applicant's disclosure.

The Examiner's comments respecting the combination of references have been carefully considered, but it is evident that the Office Action does not offer any support for the view or

even argue that the requirements as enumerated above to establish a *prima facie* case of obviousness have been satisfied.

The office action states initially "applicants mainly argue that Peiffer et al. failed to disclose an isotactic propylene-ethylene co-polymer containing no more than 1.0 weight percent ethylene---" This is not only part of applicant's arguments; it is a factually accurate statement of what Peiffer fails to disclose and this has been acknowledged as such by the Examiner. Thus, the First Office Action at the bottom of page two states "Peiffer et al. fail to disclose isotactic propylene-ethylene random polymer having an ethylene content up to 1.0 weight percent by weight---" To the extent the secondary reference Shiga is relied upon in a proposed combination of reference teachings to form some sort of a basis for proposed modification of Peiffer. The Examiner appears to acknowledge in page three of the Office Action "The Examiner agrees that Shiga et al. do not state that their copolymer is an isotactic polymer." Thus, it is clear that when the Peiffer and Shiga references are evaluated for what they actually disclose, these two references taken together do not provide a suggestion or motivation to combine their teachings as required in the first requirement in MPEP §2143. Further, applicants would respectfully submit that the fact that Shiga does not disclose the polymer disclosed there to be an amorphous polymer would indicate that the Shiga polymer is an isotactic propylene-ethylene co-polymer. Moreover, assuming that the disclosure in Shiga respecting an amorphous polymer would suggest that the Shiga polymer is not amorphous, this does not inevitably lead to the conclusion that the Shiga polymer is an isotactic propylene-ethylene co-polymer. Various other polymer configurations such as syndiotactic, homi-isotactic and even stereo block polymers are a possibility. It is clear that there is nothing in Shiga and Peiffer when considered together to provide a motivation to combine their teachings as required in MPEP §2143.

With respect to the patent to Reid and McAlpin in view of the comments found at the top of page four of the Office Action, it appears that the Examiner proposes to combine McAlpin with Peiffer and Shiga to establish obviousness of claim 32 and to combine Reid with Peiffer and Shiga to establish obviousness of claims 31 and 39. With respect to each of these proposed rejections applicants would respectfully submit that Examiner has failed to establish a motivation to combine the referenced teachings in order to establish a *prima facie* case of obviousness under the standard as discussed previously. The patent to McAlpin appears to have nothing in common with applicants' invention or the primary reference of Peiffer. McAlpin contains no disclosure relative to a processing modifier of any kind. There is nothing in McAlpin which would support any sort of modification of the Peiffer reference or the Peiffer reference when combined with Shiga to employ a processing modifier to arrive at a film layer having the characteristics called for in claim 32. With respect to the patent to Reid, it will be recalled that the voided layer in Peiffer is employed to impact the optical properties of the film such as to provide a translucent or opaque appearance. One of ordinary skill in the art consider the prior art teachings and without reference to applicant's disclosure clearly would not be motivated to combine the prior art teachings in order to metalize the opaque film of Peiffer.

For the reasons advanced above and in applicant's previous Response, it is respectfully submitted that the applicant's claims are patentable over the combination of Peiffer and Shiga together with the tertiary references Reid and McAlpin. Accordingly, an early reconsideration and allowance of this application is respectfully requested.

Submitted herewith is a check in the amount of \$120.00 for a one-month extension for Response to March 10, 2005.

The Commissioner is authorized to charge any fee due in connection with the submission of this document to the Locke Liddell & Sapp LLP deposit account no. 12-1781.

Respectfully submitted,



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